

MAY 18 1993

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|-----------------------------------|---|-----------------------|
| In re Applications of |) | MM Docket No. 93-53 |
| |) | |
| KR PARTNERS |) | File No. BPH-911001MB |
| |) | |
| KES COMMUNICATIONS, INC. |) | File No. BPH-911003MH |
| |) | |
| LORI LYNN FORBES |) | File No. BPH-911004MH |
| |) | |
| For a Construction Permit for a |) | |
| New FM Station on Channel 256C in |) | |
| Waimea, Hawaii |) | |

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

**SECOND MOTION TO ENLARGE ISSUES
AGAINST KES COMMUNICATIONS, INC.**

KR Partners ("KR"), by counsel and pursuant to 47 C.F.R. Section 1.229(b)(3), hereby requests the Presiding Judge to enlarge the issues against KES Communications, Inc. (KES) to determine whether it is financially qualified and whether it falsely certified its financial qualifications in its original application and an amendment to its application filed on March 22, 1993. In support thereof the following is stated.

TIMELINESS

Section 1.229(b)(3) provides that motions to enlarge which are based on new or newly discovered facts must be filed within fifteen days after such facts are discovered. This motion is based on information contained in documents which KES submitted in its "Response and Partial Objection to Request for Production of Documents," dated May 3, 1993, and the "Opposition to Motion to Enlarge the Issues," which KES filed on May 5, 1993. KR is filing

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this motion within fifteen days of the date it received the documents which demonstrate that KES is not financially qualified, and was not financially qualified when it filed its application.

KES'S ORIGINAL FINANCIAL CERTIFICATION

FCC Form 301 requires an applicant to certify that "sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue." An applicant must "state the total funds its estimates are necessary to construct and operate the requested facility for three months without revenue," and to identify the source and amount of funds available. FCC Form 301, Section III.

KES filed its application on October 3, 1991. Karen Slade, President and sole stockholder of KES, executed KES's application on October 1, 1991. In response to Section III KES affirmatively certified its financial qualifications. KES indicated that it had available \$400,000 from a corporate lender, Superior Financial Mortgage Lending Services ("Superior Financial"), to meet its estimated \$396,399 cost to construct and initially operate its proposed facility. See Attachment 1, containing relevant excerpts from KES's original application.

Documents now available demonstrate that at the time KES certified its financial qualifications it did not include in its cost estimates the projected costs for its proposed tower. The documents demonstrate that the letter from Superior Financial committing to loan KES \$400,000 was dated three days before KES's

engineer discussed the availability of KES's proposed site, and seven days before the date of a \$98,500 price quote for KES's tower, not including transportation and other associated costs. Moreover, the price quote specified a tower approximately 50 feet shorter than the tower actually proposed in KES's application.

Attachment 2 is a copy of the financial commitment letter from Superior Financial to KES dated September 23, 1991. The letter

that it had obtained reasonable assurance of its proposed site based, at least in part, on 1) a discussion on or about September 26, 1993, between KES's engineer and Mr. Conrad Loui, a representative of Motorola (the lessee of KES's proposed site), and 2) Mr. Loui's letter to Ms. Slade of the same date agreeing to enter into negotiation with her for a lease of the site.³ These events occurred three days after the date of the Superior Financing commitment letter.

KES also pointed to a price quote for a tower which would conform to the existing site requirements in Motorola's underlying lease. KES's engineer stated that he had contacted Tower Specialties after his discussion with Mr. Loui and received from it a quote for a 400 foot tower guyed at a 100 foot radius.⁴ The price quote, a copy of which was attached to the declaration of KES's engineer (and is included in Attachment 4 hereto), was dated September 30, 1991, seven days after the date of Superior Financial's letter.

Tower Specialties quoted a price of "\$98,500, F.O.B.: Waycross, Georgia." Thus, the price did not include shipping the

³ See "KES Opposition to Motion to Enlarge the Issues" filed May 5, 1993, at pages 5-7, and Exhibits 2 and 3 (Declarations from KES's engineer, William G. Brown and Mr. Loui). Copies of the declarations (excluding some attachments) and Mr. Loui's September 26, 1991, letter to Ms. Slade are contained in Attachment 4 hereto. KES's engineer does not state the specific date of his discussion with Mr. Loui. Mr. Loui states that the discussion occurred on or about September 26, 1991.

⁴ This is a less than normal guying distance for a tower of such height, as reflected in the engineer's description of Tower Specialties as a firm that specializes in the manufacture of towers that are "short guyed."

tower from Georgia to Hawaii. Additionally, Tower Specialties stated that the customer (i.e., KES) would also have to pay air and ground transportation and lodging costs for a four man tower crew. It further stated that due to the abnormal location of the tower site the customer (KES) would have responsibility for special equipment, fees or other back charges necessary to complete the job in a safe manner at cost plus 20%. No price quote or estimate was provided for any of these extra charges.

Because Tower Specialties price quote is dated one week after the Superior Financial loan letter, KES could not have included the tower cost in any estimates which it may have provided to Superior Financial prior to the issuance of its September 23 letter.⁵ Indeed, the cost estimates in KES's Business Plan (Attachment 3, hereto) make no provision for the Tower Specialties tower and do not take into account its price quote. The only reference to equipment costs is a proposed "Harris/Allied Turnkey System."

Thus, the cost estimates which formed the basis for KES's financial certification understate KES's projected costs by at least \$98,500. It is more likely, however, that KES understated

⁵ It is unclear whether KES ever did provide cost estimates to Superior Financial. While Superior Financial's letter to Ms. Slade states that "[w]e are familiar with you and your credit history," there is no indication that Ms. Slade ever discussed with Superior Financial KES's plans for its proposed station, or the costs involved. Compare, Albert E. Gary, 5 FCC Rcd 6235, 6237 (Rev. Bd. 1990); Scioto Broadcasters Limited Partnership, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990). Superior Financial is not a bank, and there is no indication that it has a long and established relationship with KES or Ms. Slade such that it is thoroughly familiar with their assets, credit history, current business plan and similar data. See Ibid.

its estimated costs by considerably more than that amount. First, Tower Specialties quoted a price for a 400 foot tower, approximately 50 feet shorter than the tower KES actually proposes in its application. See KES Application, Section V-B, Question 7, wherein the top of KES's supporting structure is listed as 138 meters (452.64 feet) above ground level. Second, as described above, Tower Specialties did not include numerous additional costs associated with the tower, including transporting the tower from Georgia to Hawaii, transportation and lodging for a four person tower crew, and any additional costs (plus 20%) for charges resulting from the "abnormal location of [the] tower site."

KES relies on the availability of \$400,000 to meet its financial needs. KES's stated cost estimate of \$396,399 leaves only \$3,601 to cover the actual cost of KES's 450 foot tower, which at a minimum will cost \$98,500. Thus, when KES filed its application and certified its financial qualifications it did not have available to it sufficient funds to meet its actual financial requirements. KES's original financial certification was, therefore, false, as was its stated estimate of the funds required to construct and operate its proposed facility.

KES'S AMENDMENT

On March 22, 1993, KES filed an amendment to its application to change the source of financing upon which it relied to demonstrate its financial qualifications.⁶ KES noted the withdrawal of

⁶ KES originally filed its amendment on March 10, 1993, between the date of adoption and release of the Hearing Designation Order in this proceeding. As a consequence, KES resubmitted its

the Superior Financial loan commitment, and substituted a new loan commitment in the identical amount of \$400,000 from First Interstate Bank of California ("First Interstate"). In so doing, KES amended its response to Section III of Form 301. It did not, however, amend its stated estimate of the total funds required to construct and operate its station. In fact, KES highlighted the fact that it was not modifying its cost estimates. See KES "Petition for Leave to Amend and Re-Submission of Amendment," filed March 22, 1993, at footnote 4.

When KES amended its application it continued to omit the cost of the Tower Specialties tower from its estimate of the funds it required to construct and operate its station. This occurred despite the fact, as revealed in KES's subsequent Opposition to Motion to Enlarge the Issues, that KES relied on Tower Specialties' price quote in claiming to have reasonable assurance of its proposed transmitter site. KES's amended financial certification, like its original certification, was false.

FINANCIAL AND FALSE CERTIFICATION ISSUES ARE WARRANTED

KES has twice falsely certified its financial qualifications, first in its original application and then again in its March 22, 1993, amendment. Each time in response to Section III of Form 301 KES excluded from its stated cost estimates the cost of the short guyed tower located at an abnormal site⁷ which it proposes to

amendment on March 22, 1993.

⁷ See Declaration of William G. Brown and the September 30, 1991, letter from Tower Specialties in Attachment 4.

construct. It is fundamental that an applicant must have reasonable assurance of sufficient funds to cover all of the projected costs in constructing and initially operating its station for three months. FCC Form 301, Section III. Because KES has not included the cost of its unusual 450 foot tower proposal in its cost estimates, and because that cost far exceeds the \$3,601 balance between KES's stated estimates and the amount of funds which it states is available, KES is not financially qualified. It was not financially qualified when it filed its application or as of its March 22, 1993, amendment. See Sunbelt Limited Partnership, 7 FCC Rcd 4394, 4396 (Rev. Bd. 1992); Victorson Gourp, Inc., 6 FCC Rcd 1697, 1700 (Rev. Bd. 1991); Susan S. Mulkey, 4 FCC Rcd 5520, 5523 n.3 (1989).

KES's false financial certifications also constitute misrepresentations to the Commission. KES misrepresented the actual cost projections for its proposed station, and misrepresented that it has available sufficient funds to cover those costs. Indeed, KES's subsequent failure in its amendment to correct its understated cost estimates to include the cost of its proposed tower may be more egregious than the original false certification its application. See David Ortiz Radio Corp. v. FCC, 941 F.2d 1253 (D.C. Cir. 1991); Edwin A. Bernstein, 6 FCC Rcd 6841, 6844 n.5 (Rev. Bd. 1991). Substantial and material questions exist concerning KES's financial qualifications and the veracity of its financial certifications.

Wherefore, for the foregoing reasons, KR respectfully requests


the Presiding Judge to add the following issues with respect to KES:

1. To determine whether KES Communications, Inc. was financially qualified to be a Commission licensee when it filed its application.
2. To determine whether KES Communications, Inc. was financially qualified to be a Commission licensee when it amended its application on March 22, 1993, and whether it is currently financially qualified.
3. To determine whether KES Communications, Inc. falsely certified its financial qualifications in its original application and in its March 22, 1993, amendment, and if so, the effect thereof on its qualifications to be a Commission licensee.
4. To determine, in light of the foregoing issues, whether KES Communications, Inc. is basically qualified.

Respectfully submitted,

KR PARTNERS

By:


Mark Van Bergh
Richard H. Waysdorf

WAYS DORF & VAN BERGH
Suite 504
1000 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 785-2870

Dated: May 18, 1993

REQUESTED DISCOVERY

In the event the foregoing Motion to Enlarge Issues Against KES Communications, Inc. is granted, KR would request KES to produce the following documents:

1. Copies of all budgets, business plans, or other financial information, including those provided to Superior Financial Mortgage Lending Services, First Interstate Bank of California, or any other person or entity, with regard to the cost of constructing KES's proposed station.

2. Copies of all correspondence, notes, memoranda, or any other document concerning the preparation of or existence of cost estimates concerning the construction of KES's proposed station.

3. Copies of all documents which KES, Karen Slade, or any other agent or representative of KES received concerning the cost of constructing KES's proposed station.

4. Copies of all documents which relate to any effort or action which KES, any principal of KES, any agent or representative of KES, or any other person undertook on behalf of KES with respect to determining the cost of complying with the conditions contained in the letter dated September 26, 1991, from Conrad Loui to Karen Slade/KES Communications.

5. Copies of all documents related to any efforts made by a principal of KES, an agent or representative of KES, or any other person on behalf of KES to determine any additional costs which KES would incur with respect to obtaining and constructing its proposed tower beyond the price quoted in the letter dated September 30, 1991, from Tower Specialties, Inc., including the cost of transporting the tower from Georgia to Hawaii, the cost of transporting and lodging for a four person tower crew, and additional charges due to the location of KES's proposed tower site.

6. Copies of all documents related to any efforts made by a principal of KES, an agent or representative of KES, or any other person on behalf of KES to determine the cost of constructing and operating KES's proposed station.

7. Copies of all documents concerning the amount and availability of funds to KES for the construction and operation of its proposed station upon which it relied in certifying its financial qualifications in its original application and its March 22, 1993, amendment.

KR Partners would also seek to pose interrogatories to KES requesting it to identify any and all persons who participated in

estimating its proposed construction and operating costs, and obtaining or seeking monetary commitments to KES to fund the construction and operation of its proposed station.

KR Partners would also intend to take the deposition of Karen Slade, KES's sole owner; William G. Brown, KES's technical consultant; Lloyd Taylor, President of Superior Financial Mortgage Lending Services; Mr. Steven Malcolm, Vice President of Superior Financial Mortgage Lending Services; Brenda Bellard, Vice President and Branch Manager of First Interstate Bank of California; Grant Balwanz of Tower Specialties, Inc., and any other persons involved in the preparation of KES's financial certification efforts who are revealed in any documents produced or identified in response to any interrogatories.

ATTACHMENT 1

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

| | | |
|-----------------------------|-----------|---|
| For COMMISSION Fee Use Only | FEE NO: | For APPLICANT Fee Use Only Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity |
| | FEE TYPE: | |
| | FEE AMT: | |
| | ID SEQ: | FOR COMMISSION USE ONLY FILE NO. BPA-91003MH |

Section 1 - GENERAL INFORMATION

| | | | | | |
|--|--------------------|--------------------------|---|--------------------|--------------------------|
| 1. Name of Applicant KES COMMUNICATIONS, INC. | | | Send notices and communications to the following person at the address below: Name Gary S. Smithwick Smithwick & Belendiuk, P.C. | | |
| Street Address or P.O. Box 1148 South Citrus Avenue | | | Street Address or P.O. Box 2033 M Street, N.W., Suite 207 | | |
| City Los Angeles | State CA | ZIP Code 90019 | City Washington | State DC | ZIP Code 20036 |
| Telephone No. (Include Area Code) (213) 935-9596 or 934-8371 | | | Telephone No. (Include Area Code) (202) 785-2800 | | |

2 This application is for: ☐ AM ☒ FM ☐ TV

| | | | |
|---|-------------------------|-----------------------|--------------------|
| (a) Channel No. or Frequency 256C | (b) Principal Community | City WAIMEA | State HI |
|---|-------------------------|-----------------------|--------------------|

(c) Check one of the following boxes:

☒ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: _____

☐ MINOR change in licensed facilities; call sign: _____

☐ MAJOR modification of construction permit; call sign: _____
File No. of construction permit: _____

☐ MINOR modification of construction permit; call sign: _____
File No. of construction permit: _____

☐ AMENDMENT to pending application; Application file number: _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section 1 and those other portions of the form that contain the amended information.

3 Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 396,399.00

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

| Source of Funds (Name and Address) | Telephone Number | Relationship | Amount |
|--|------------------|---------------------|--------------|
| Lloyd Taylor President Superior Financial Mortgage Lending Services 77 N. Mentor Avenue Suite 3 Pasadena, CA 91106 | (818) 793-3812 | Corporate Lender | \$400,000.00 |

SECTION V-8 - FM BROADCAST ENGINEERING DATA (Page 2)

4. Does the application propose to correct previous site coordinates?
If Yes, list old coordinates.

☐ Yes ☒ No

| | | | |
|----------|-------|-----------|-------|
| Latitude | ° ' " | Longitude | ° ' " |
|----------|-------|-----------|-------|

5. Has the FAA been notified of the proposed construction?

☒ Yes ☐ No

If Yes, give date and office where notice was filed and attach as an Exhibit a copy of FAA determination, if available.

Exhibit No.
1

Date October 1, 1991 Office where filed Western-Pacific Region-Los Angeles, CA

6. Use all leading zeros within 2 km of antenna site. Specify distance and bearing from structure to nearest point of the

SECTION VII - CERTIFICATION (Page 6)

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

| | |
|---|------------------------------------|
| Name of Applicant KES COMMUNICATIONS, INC. | Signature <i>Karen E. Stade</i> |
| Date <i>October 1, 1991</i> | Title President |

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, analysts, engineers and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to vary from 71 hours 45 minutes to 301 hours 30 minutes with an average of 118 hours 28 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0027), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(a)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

ATTACHMENT 2

**SUPERIOR FINANCIAL
MORTGAGE LENDING SERVICES**

77 N. Mentor Avenue, Suite 3
Pasadena, CA 91106

Telephone (818) 793-3812
Fax (818) 793-3998

September 23, 1991

KAREN SLADE / K E S COMMUNICATIONS, INC.
1148 SO. CITRUS AVE.
LOS ANGELES, CALIFORNIA 90019

Dear Ms. Slade

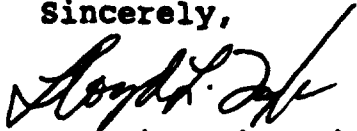
This letter will confirm the willingness of our institution to provide a loan to you or a corporation controlled by you in the amount of \$ 400,000. to finance the construction and initial operation of your proposed new FM radio station in Waimea, Hawaii, under the following terms and conditions:

| | |
|-------------|--|
| Term: | (5 years) |
| Repayment: | (Interest only in year one with principal amortized in full over the remaining years in equal installments.) |
| Rate: | (<u>12.125</u> %) |
| Collateral: | Pledge of station assets and of stock if a corporation is the loan applicant.) |

We understand that the Federal Communication Commission requires that you have reasonable assurance of the availability of the above described loan. This letter is intended to provide such reasonable assurance but does not constitute a binding commitment on the part of our institution to make the loan. We are familiar with you and your credit history. Our willingness to make such a loan is expressly conditioned upon your receiving all necessary authorizations from the Federal Communications Commission, including the grant of your application for a construction permit in Waimea, Hawaii and is subject at time of disbursement to the following:

1. No adverse changed conditions in the circumstances considered in our decision to make this loan available.
2. A satisfactory credit review.
3. The execution of loan documents (including, without limitation, security and guaranty agreements) all satisfactory to the institution and its counsel in their sole discretion.

Sincerely,



Superior Financial
Lloyd Taylor
President



Steven Malcolm
V.P. Major Lending

ATTACHMENT 3

BUSINESS PLAN
 KES COMMUNICATIONS INC./ KAREN SLADE
 New FM
 WAIMEA, HAWAII

 CONSTRUCTION COSTS

| | |
|--------------------------------|---------|
| Harris/Allied Turnkey System : | 225,000 |
| Furniture & Fixtures | 15,000 |
| Legal Fees | 50,000 |
| Engineering Fees | 3,000 |
| FCC filing Fees | 7,800 |
| Miscellaneous Expenses | 3,000 |

TOTAL CONSTRUCTION COSTS

 303,800

OPERATING EXPENSES

| | 1st month | 2nd month | 3rd month |
|----------------------------------|-----------|-----------|-----------|
| Tower Site Rent | 400 | 400 | 400 |
| Studio Rent | 2,500 | 2,500 | 2,500 |
| Satellite Service | 800 | 800 | 800 |
| Electric | 800 | 800 | 800 |
| Telephone | 500 | 500 | 500 |
| Advertising | 1,000 | 1,000 | 1,000 |
| Salaries: | | | |
| General Manager | 3,333 | 3,333 | 3,333 |
| Sales Manager | 1,666 | 1,666 | 1,666 |
| Production Director | 1,500 | 1,500 | 1,500 |
| Overnight Operator | 1,000 | 1,000 | 1,000 |
| Weekend Staff | 1,000 | 1,000 | 1,000 |
| Salesman #1 | 600 | 600 | 600 |
| Salesman #2 | 600 | 600 | 600 |
| Bookkeeper/Office Manager | 1,250 | 1,250 | 1,250 |
| Engineer | 500 | 500 | 500 |
| Secretary | 1,500 | 1,500 | 1,500 |
| Payroll Taxes | 1,942 | 1,942 | 1,942 |
| (FICA, Unemployment, etc.) | | | |
| Royalties & Licences | 320 | 320 | 320 |
| (ASCAP, BMI, & SESCAC) | | | |
| Debt Service (11.5% - \$400,000) | 6,955 | 6,955 | 6,955 |
| Maintenance & Supplies | 350 | 350 | 350 |
| Insurance | 600 | 600 | 600 |
| Accounting & Legal Fees | 1,000 | 1,000 | 1,000 |
| Miscellaneous Expenses | 750 | 750 | 750 |

TOTAL OPERATING EXPENSES

30,866 30,866 30,866
 =====

CONSTRUCTION AND OPERATION

TOTAL COST

396,399

ATTACHMENT 4



MOTOROLA

Communications International Inc.

Address Reply to:
99-1180 Iwaena Street
Aiea, Hawaii 96701
(808) 487-0033

September 26, 1991

Karen Slade / Kes Communications
1148 South Citrus Avenue
Los Angeles, California 90019

Re: Letter of Intent for lease of property for FM Radio Station

Dear Karen Slade:

In the event the Federal Communications Commission should grant to you and/or your assignees a construction permit for an FM Radio Station at -

Kaloko Ridge, Island of Hawaii
Lat: 19-43-16 Long: 155-55-26
Ground Elevation: 5060 feet -

Then the undersigned agrees to enter into negotiation with you for a lease, subject to the terms and conditions in Motorola's underlying lease, equipment meeting site and engineering standards, frequency compatibility, non-interference and mutually agreed upon terms and conditions for site rental, which will encompass ingress and egress to the subject property on a 24 hour basis.

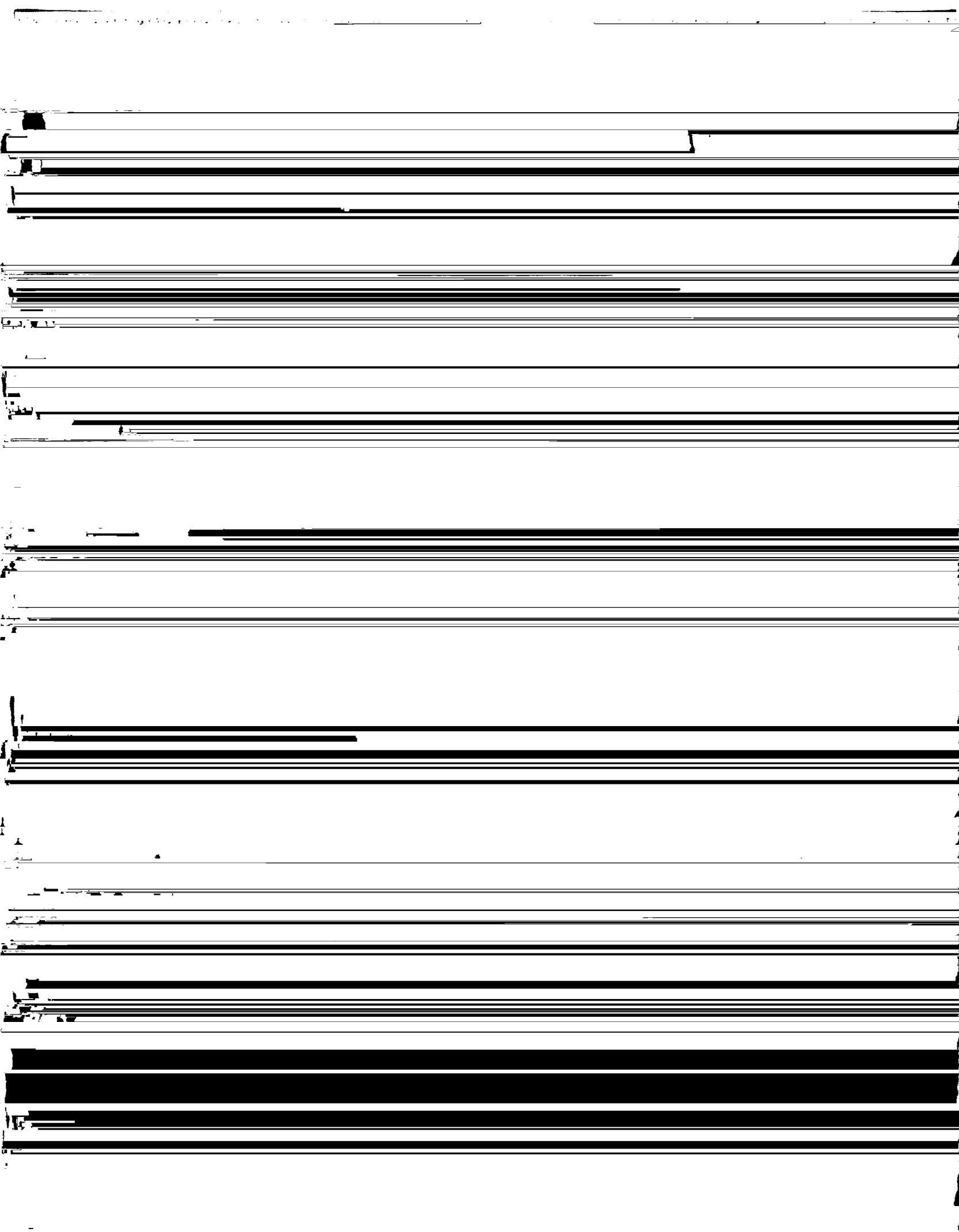
The terms of the lease have been left open since we realize that it may be a number of years before you obtain FCC authorization to construct the station.

By issuance of this letter, the undersigned intends to give the Federal Communications Commission reasonable assurance of the availability of the subject property for the purpose of filing an application for an FM Radio Station license.

Yours Truly,
Motorola Communication International, Inc.


Conrad Loui
Project Manager, Network Services

CL:f



and I briefly discussed two options for KES. One option would have KES replace the current Motorola 150 foot tower with an approximately 400 foot KES-owned structure. Motorola would then relocate their equipment on the new tower. Therefore, Motorola would provide the ground lease and rent space from KES on the new tower. The other option would be for Motorola to build the taller tower and KES would lease tower and equipment space from Motorola. The site is leased by Motorola and a copy of the underlying lease is attached to this statement. As can be seen on the Motorola underlying lease, Motorola can develop the site electronically as they deem necessary. As long as the new tower will fit into the same footprint, Motorola would not be required to modify their underlying lease.

I then contacted Mr. Grant Balwinz of Tower Specialties, Inc., ("TSI"). TSI is a tower manufacturing firm that has specialized in the manufacture of towers that are short guyed. I determined from TSI that it would be possible to build approximately a 400 foot tower on the site in Hawaii and maintain a 100 foot guy radius. I am enclosing a copy of the quote received from TSI for such a tower.

It should be pointed out that in September 1991, Mr. Loui stated he had good relations with the site owner and felt he could obtain additional property if it were required.